

Task Force on the Future for Growth and Development

AGENDA

September 9, 2008

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- I. Welcome/Administrative Matters
 - II. Listening Sessions
 - III. 8 Visions Workgroup
 - IV. Infrastructure Assessment Workgroup
 - V. Rethinking Priority Funding Areas
 - VI. Adequate Public Facilities Ordinances
 - VII. Public Comments

Beverages/light snacks will be provided.

Future Meetings (All meetings are from 1- 4:00 pm)

September 22, 2008

***October 15, 2008**

October 27, 2008

***November 12, 2008**

November 24, 2008

***Denotes new meeting dates.**

***Maryland Department of Planning
301 W. Preston Street
Olmsted Conference Room 11th Floor***

Task Force on the Future for Growth and Development in Maryland

August 12, 2008 / 1:00 PM – 4:00 PM

The Maryland Department of Planning

Baltimore, Maryland

Meeting Summary

Attendance

Members: Jon Laria (Chair), David Beall, Karl Brendle, David Carey, Sandy Coyman, Jan Gardner, Carol Gilbert, Teena Green, Richard Hall, David Jenkins, Brigid Kenney, Gerrit Knaap, Dru Schmidt-Perkins,

Attendees: Marty Baker (MDOT), Jamie Bridges (BMC), Candace Donoho (MML), Cristen Flynn(DLS), Landra Jones (Lt. Gov's Office), Les Knapp (MACo), Steve Lafferty (Delegate), Katie Maloney (Builders Association), Susan Mitchell (MAR), Sandi Olek (DNR), John Papagni (DHCD), Izzy Patoka (Governors Office) , Frank Principe (Balto. Co. Govt.), Caroline Varney-Alvarado (DHCD)

MDP Staff: Kiman Choi, Amanda Conn, Peter Conrad, David Costello, Arabia Davis, Nicole Diehlmann, Jenny King, Stephanie Martins, Marco Merrick, Matt Power, Sharon Reichlyn, Pat Russell, Shelley Wasserman, Bihui Xu

Welcome/Administrative Matters

Mr. Jon Laria, the Chair opened the meeting and thanked everyone for their attendance.

Mr. Laria briefed the group on an August 8, 2008 meeting with Ms. Helga Weschke and Ms. Rhonda Ray of the Department of Business and Economic Development (DBED). Although DBED is not formally on this Task Force they are very interested in trying to connect the Task Force's mission with their programs and will be drafting a memo on DBED's ability to connect with the Task Force's work.

Mr. Hall announced that the Listening Sessions planning are well is well underway. The Sessions are scheduled for six dates throughout the month of September and will be held in various places around the State. The format will begin with a brief regional background and an update on the Task Force's status. A moderator will then pose questions for the attendees to react to and comment. This will also include time for attendees to use electronic clickers to respond to a series of questions. At the end of the meeting topic tables will be open to attendees to further communicate their thoughts.

Mr. Hall noted that early next week Task Force members will receive an agenda, format details, questions and table topics. He also mentioned that the evening will also include a mapping exercise to give attendees the opportunity to graphically place a dot in areas where they feel growth should and should not be directed.

More information can be found about the Listening Sessions on MDP's website at:

<http://www.mdp.state.md.us>. Marco Merrick, Director of Communications for MDP will send out

Listening Session flyers and information for the Task Force to distribute. Mr. Merrick also noted that the Central Maryland location originally scheduled at Milford Mill High School has been changed to Woodlawn High School. The Task Force was encouraged but not required to attend some of these Listening Sessions. Mr. Hall committed to distributing the questions that will be discussed at the Listening Sessions to the Task Force for their feedback within the next two weeks.

Ms. Gilbert suggested that Prince George's County be added to the Listening Sessions locations.

Mr. Laria informed the Task Force of some administrative matters:

Mr. Laria reminded the Task Force about additions to the meeting schedule. Some members have expressed their concerns with the new meeting dates which have been recently added. Unfortunately, with such a huge charge, the Task Force needed to include more meeting dates, which have inconvenienced some of the members. Mr. Laria noted that he would try to schedule meetings in advance and attempt to accommodate as many members as possible.

Mr. Laria also announced that MDOT's representative, Caitlin Rayman, will no longer serve on the Task Force due to other obligations at MDOT and Don Halligan's return to the agency; Don, Director of Planning & Capital Improvements, will serve as MDOT's representative. Mr. Laria praised Ms. Rayman's contributions to the Task Force and welcomed Don's expected contributions.

Mr. Hall also introduced Peter Conrad, now head of local planning at MDP.

Parameters: State Transportation Plan

Marty Baker, MDOT, circulated an updated outline of the parameters for a State Transportation Plan. It was noted that such a transportation plan would elaborate on the land use element. She informed the Task Force that MDOT is currently in the process of updating the Maryland Transportation Plan (MTP) and that the future State Development Plan would be a sister document to the MTP. The State Development Plan's elaboration of Areas of Critical State Concern, an added layer of analysis, will inform MDOT's capital program decision making and that it will serve as a great resource for the locals. Additionally, in order to facilitate the State Development Process, MDOT is bringing in consultants and various resources to assist with the Plan.

Ms. Baker explained the highlights of the outline:

- Overview: Demonstrate the importance of the transportation plan and smart growth.
- Current Status/Analysis: This section details the primary requirements of the statute such as circulation patterns which can be married to MDP's travel pattern data and other MDOT data.
 - This section also will summarize the more intensive planning- help locals with their development plans.
 - Sister agencies will also be able to know what MDOT is doing.
 - Address smart growth requirements with regard to MDOT's capital spending.
- Challenges/Issues: Focus on capital spending, PFA shortcomings related to major transportation decision making.
- Recommendations/Next Steps: Transportation planning coordination to inform MDOT's review of local comprehensive plans.

Ms. Gardner asked if MDOT sends someone to the local jurisdiction during the comprehensive planning process. Ms. Baker responded that occasionally the local jurisdiction does invite MDOT, but that unless they were invited, MDOT does not get involved in the process.

Mr. Laria commended MDOT for its work and asked about the process for MDOT from this point forward. Ms. Baker explained that MDOT has consultant resources and will work with MDP to formulate this component of the overall State Development Plan (SDP). The SDP will be a sister document to the MTP and the SDP will reference the MTP and Attainment Report. Over the next few months, more substance will be added to the outline.

Mr. Laria noted the three tiered approach concerning growth areas in the MDOT materials and suggested that this framework should be discussed by the Task Force.

Ms. Schmidt-Perkins commented that as she reviewed the outline, she failed to see the connection to achieving goals. She pointed out that Vehicle Miles Traveled (VMT), Climate Change and high gas prices for example seem to be missing. It was suggested to re-enter the goals into the transportation section and to make them specific rather than using "lofty" language such as "promote..". She further noted that plans should allow the reader to evaluate and guide and ultimately hold those accountable.

Mr. Laria encouraged the Task Force to provide MDOT with additional constructive feedback.

Mr. Coyman noted that there is a lot of literature available on goals, objectives that can help in the writing of a State Development Plan.

Ms. Schmidt-Perkins asked how the public participation process will be implemented. Mr. Hall explained that in early-mid 2009 the Plan would be put out for public feedback.

8 Visions Workgroup

Mr. Knaap gave an update on the 8 Visions workgroup meeting. The goals and visions from counties and municipalities were reviewed. Nicole Diehlmann, MHT and Joe Tassone, MDP have offered to draft and update the Visions.

Mr. Hall asked to what degree the workgroup discussed the 8 Visions -- as changes just to Article 66B or more broadly as to what Marylanders think about the Visions and their role as a statement for other purposes.

Mr. Laria stated that it would be unavoidable to tackle the broader issue, but also to focus on their role in Article 66B.

Ms. Wasserman interjected that the language (Visions) is not only in Article 66B but is also in MDP's enabling legislation. They are not called "Visions" but instead are MDP's policies; therefore the effect would extend beyond 66B.

Ms. Gilbert suggested the workgroup develop a draft that the Task Force felt comfortable distributing, then if at that time, it was broad enough people could comment on these Visions at the Listening Sessions.

Ms. Baker noted that the Visions, with any revisions, should be incorporated into the SDP.

Infrastructure Assessment Workgroup

Mr. Coyman thanked Arabia Davis, MDP for all her hard work and presented findings from the Infrastructure Assessment Workgroup. He explained that there is an \$8 billion need for infrastructure. There is a huge difference between demand and funding and it should be decided to what degree the locals are willing to pay. One avenue of funding is to put greater pressure at the federal level.

Mr. Beall asked why those in the rural areas should have to pay the same when the majority of the users are in urban areas. Mr. Coyman responded that those points are very legitimate and they need to be discussed.

Mr. Coyman requested that the workgroup be given a little more time to provide some additional clarification. He asked that the Task Force accept these initial findings as an initial draft. He also suggested the Task Force take a look at this document and make comments and suggestions as needed. Comments were to be forwarded to Ms. Davis by August 25, 2008.

Terrapin Run Workgroup

The workgroup made three alternative recommendations for consideration by the Task Force: (1) write an "ode" to the comprehensive plan which reiterates the importance of the comprehensive plan as one of the most important planning tools; (2) Clarify the special exception language; or (3) Make targeted revisions to the law. (The workgroup's memo is included in Task Force materials)

The Task Force concluded that, if the court's decision does compromise the accepted role of the comprehensive plan, the Task Force should take a firm stand in defense of the plans' role. The Task Force decided, however, not to draft specific legislation but rather to make a strong recommendation that legislative action be taken to clarify the plans' role and the historically understood requirement that land use decisions be truly consistent with the plan. Some members expressed concern, however, that the recommendation not overreach. Mr. Laria suggested that a specific statement be drafted for final review by the Task Force consistent with the above.

Recommendation Focus Areas

Mr. Laria said he intended to identify 2-4 focus areas for more detailed discussion by the Task Force, and invited members to suggest such focus areas to him for consideration.

The meeting adjourned at 3:56 p.m.

Memorandum

To: Jon Laria, Chair,
Task Force on the Future of Growth and Development
From: Gerrit Knaap, Chair
Subgroup on the Eight Visions
Re: Visions for Growth and Development
Date: September 5, 2008

During the July 28, 2008, meeting of the Task Force on the Future of Growth and Development, you asked me to lead a subgroup and gave the subgroup the following charge: review the visions for growth and development contained in the existing statutes, consider whether they should be revised or replaced, and offer recommendations to the larger Task Force. This memorandum presents our response to that charge. It contains four parts: (1) a description of our proceedings, (2) a set of recommendations, (3) a list of existing and proposed visions, and (4) a list of subgroup members.

Proceedings.

The subgroup met three times: August 11 in Annapolis, August 18 in Crownsville, and August 26 in Howard County. At the first meeting the subgroup reviewed its charge, agreed on procedures, received a briefing on the statutory function of the existing visions, and reviewed visions or goal statements adopted by other states and local governments in Maryland. At the end of the first meeting, the subgroup unanimously agreed that the existing visions were out of date and needed revision. Nicole Diehlmann and Joe Tassone of the Maryland Department of Planning (MDP) agreed to draft new visions for discussion at the next meeting. At the second meeting the subgroup reviewed the draft visions prepared by MDP staff, offered extensive comments and editorial suggestions, asked MDP staff to prepare a second draft, and agreed to meet a third time. At the third meeting, the subgroup offered minor comments, asked MDP staff to make minor revisions, agreed on recommendations, and directed the subgroup chair to draft a memorandum to the Task Force chair.

Recommendations.

The subgroup unanimously agreed to offer the following recommendations:

- that the Task Force includes the 12 proposed visions as part of the discussion at the upcoming listening sessions;
- that the 12 proposed visions replace the eight visions in the existing statutes and be used to guide the growth policy of state agencies and as the basis for MDP review of local comprehensive plans; and
- that the 12 proposed visions be used to guide the State Development Plan.

Existing and Proposed Visions.

The Eight Visions (Economic Growth, Resource Protection, and Planning Act of 1992)

1. Development is concentrated in suitable areas
2. Sensitive Areas are protected
3. In rural areas, growth is directed to existing population centers and resource areas are protected
4. Stewardship of the Chesapeake Bay and the land is a universal ethic
5. Conservation of resources, including a reduction in resource consumption, is practiced
6. To assure the achievement of [the] above, economic growth is encouraged and regulatory mechanisms are streamlined
7. Adequate public facilities and infrastructure under the control of the county or municipal corporation are available or planned in areas where growth is to occur.
8. Funding mechanisms are addressed to achieve these visions

PROPOSED VISIONS

1. **Quality of Life and Sustainability:** A high quality of life is achieved through universal stewardship of the land, water and air resulting in sustainable communities and protection of the environment.
2. **Public Participation:** Citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals.
3. **Growth Areas:** Growth is concentrated in existing population and business centers, growth areas adjacent to these centers, or strategically selected new centers.
4. **Community Design:** Compact, mixed-use, walkable design consistent with existing community character and located near transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources.
5. **Infrastructure:** Growth areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sound manner.
6. **Transportation:** A well-maintained, multimodal transportation system facilitates the safe, convenient, affordable and efficient movement of people, goods and services within and between population and business centers.
7. **Housing:** A range of housing densities, types, and sizes provide residential options for citizens of all ages and incomes.
8. **Economic Development:** Economic development that promotes employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities is encouraged.
9. **Environmental Protection:** Land and water resources are carefully managed to restore and maintain healthy air and water, natural systems and living resources.
10. **Resource Conservation:** Waterways, open space, natural systems, scenic areas, forests and agricultural areas are conserved.
11. **Stewardship:** Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
12. **Implementation:** Strategies, policies, programs and funding for growth and development, resource conservation, infrastructure, and transportation are integrated across the local, regional, State and interstate levels to achieve these visions.

Subgroup Members

Gerrit Knaap, Chair	Karl Brendle
Joe Tassone	Carol Gilbert
Nicole Diehlmann	Elizabeth Hughes
Jan Gardner	Marsha McLaughlin
Brigid Kenney	Candace Donoho
Marty Baker	Les Knapp

Rethinking Priority Funding Areas

How to improve the current way the State of Maryland spends its money

I. Introduction

During several meetings of the Task Force on the Future for Growth and Development the recommendation to re-tool Priority Funding Areas has been a common theme. The broad purpose of Priority Funding Areas (PFAs) is to focus State spending to make the most efficient and effective use of existing infrastructure, to preserve existing neighborhoods and to preserve Maryland's fields, farms, and open spaces. PFAs, established by law, include:

- Municipal boundaries as of January 1997
- Designated Neighborhood Program Areas
- Enterprise Zones
- Heritage Areas that are also county growth areas
- Inside the Beltways
- Local Governments MAY certify additional areas consistent with criteria (growth areas)

Certain criteria must be met in order for an area to be a certified PFA: Existing or planned water and sewer service, average permitted residential density of 3.5 units per acre, growth plan consistent with projections, and a PFA size based on an assessment of land needed for 20 years' growth.

Nearly 12 years have passed since the PFA law was adopted. It has never been changed to meet the current landscape of growth and development. The Task Force has ascertained the necessity of recommending changes for PFAs in order to better serve Marylanders. The Task Force Chairman, Mr. Jon Laria has requested that the Maryland Department of Planning conceptually lay out how PFAs could be reconstituted so that the Task Force can formulate a recommendation about PFAs. The following is the Maryland Department of Planning's (MDP) concept on the original Task Force recommendation to restructure PFAs to include three areas: priority growth areas, stabilization areas and preservation areas. It is important to note that this is a concept and the attached map is for illustrative purposes.

II. MDP's Approach to Restructuring PFAs

MDP has been keenly aware of PFA challenges and deficiencies even before the Task Force convened. The Task Force and MDP are in alignment to see changes to the PFAs, and MDP sees this Task Force as an opportunity to spur meaningful consideration of how PFAs can work better for Maryland. PFAs determine how the State of Maryland invests its resources to promote smart growth, so consideration should be given to how the State's investments can improve Maryland's fiscal health.

The reorganization consists of two categories- Development and Conservation. Each has several levels embedded in it.

III. Development

The development category includes three (3) types of areas that encompass the existing defined Priority Funding Areas recognized by the State.

A. Priority Growth Areas

Priority Growth Areas (PGA) is areas in which the State can readily dispense its funds. They have a high building density, offer affordable housing and access to multiple modes of transit, can actually build and/or expand transit-oriented communities, have plentiful water and can handle additional sewerage. The types of areas that are PGAs are the State's Enterprise Zones and places where Transit Oriented Design is feasible. The PGA may include municipalities and some areas inside the Beltways but not all of them.

What are the criteria?

1. Transit orientated development (TOD) is one means to address a variety of issues ranging from traffic congestion to affordable housing, air pollution, and sprawl by creating compact (typically, density is planned within ½ mile of a transit station), mixed use and walkable communities centered around transit stations.

During the 2007 legislative Session the General Assembly passed SB204/HB373 which recognized the "role of transit plays in reducing highway congestion and greenhouse gas emissions, it is the intent of the General Assembly that land uses surrounding transit stations throughout the State be developed in a manner that is conducive to greater transit ridership and designed to promote transit, walking, and bicycling in addition to the automobile as a means of transportation". The Bill defines transit oriented development as:

Transit oriented development means a mix of private or public parking facilities, commercial and residential structures, and uses, improvements, and facilities customarily appurtenant to such facilities and uses, that:

Is part of a deliberate development plan or strategy involving:

Property this is adjacent of the passenger boarding and alighting location of a planned or existing transit station; or

Property, any part of which is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station;

Is planned to maximize the use of transit, walking, and bicycling by residents and employees; and

Is designated as a transit oriented development by:

The Secretary in consultation with the Secretaries of Business and Economic Development, General Services, Housing and Community Development, the Environment and Planning; and

The local government or multi-county agency with land use and planning responsibility for the relevant area.

Common features frequently found at TOD sites include:

- Range of housing offerings and pricing with a mix of commercial, retail and office uses.
- TOD is pedestrian and bicycle friendly.
- Tallest buildings are clustered immediately around the transit station, with the density of development tapering off as you go farther out.
- Parking should be carefully managed (limited, shared parking, parking decks rather than surface lots).
- High quality transit service with access to bus and/or rail.

Taking advantage of opportunities to create higher density transit destinations along our transit system allows the State to put the land around the transit stations to a higher and better use, facilitating the return of these lands to local tax roles. Transit station areas also make excellent opportunities for public- private partnerships to enhance State-owned or leased transit stations and parking areas, while enabling a private developer to create transit orientated development.

2. Enterprise Zones revitalize and stabilize communities by attracting new businesses, retaining jobs and providing incentives for employers to create new jobs. Businesses operating within an Enterprise Zone may be eligible for a tax credit towards their state income tax filings based upon the number of new jobs created, and a tax credit on their local real property taxes based on their overall capital investment into a property.
 - Real property tax credits: Ten-year credit against local real property taxes on a portion of real property improvements. Credit is 80 percent the first five years, and decreases 10 percent annually thereafter to 30 percent in the tenth and last year.
 - Income tax credits: One- or three-year credit for creating new jobs. The general credit is a one-time \$1,000 credit per new employee. For economically disadvantaged employees, the credit increases to a total of \$6,000 per employee distributed over three years.

Focus Area Tax Credits

Businesses locating in a focus area within the Baltimore City, Prince George's County, or Takoma Park/Long Branch enterprise zones may be eligible for the following tax credits:

- Real property tax credits: Ten-year, 80 percent credit against local real property taxes on a portion of real property improvements (credit does not decline in a focus area as it does with the standard benefit.)

- Personal property tax credits: Ten-year, 80 percent credit against local personal property taxes on new investment in personal property within a focus area.
- Income tax credits: One- or three-year credit for creating new jobs. The general credit is a one-time \$1,500 credit per new employee. For economically disadvantaged employees, the credit increases to a total of \$9,000 per employee distributed over three years.

B. Priority Reinvestment Areas

Priority Reinvestment Areas (PRA) is areas which have historically consisted of a mix of residential and commercial development. Typically these are areas that have experienced decay and lack of investment. Designated Neighborhoods and Community Legacy Areas would be the primary identifier of PRAs.

What are the criteria?

1. Designated Neighborhoods are mixed-use areas in need of social and/or physical revitalization, which are selected by the local jurisdictions and approved by the Secretary of the Department of Housing and Community Development (DHCD). They are established neighborhoods that have residential as well as commercial uses. Some State funding programs are available only to applicants located in or servicing clients who reside in Designated Neighborhoods. These programs include:
 - Office and Commercial Space Conversion Initiative
 - Neighborhood Business Works Program
 - Retrofit Sidewalk Program
 - Increased Incentives for the Job Creation Tax Credit Program
 - Priority Points for applications to Capital and Non-capital Historic Preservation Grant Program
 - Priority Points for applications to The Maryland Heritage Preservation and Tourism Areas Program

The criteria that are considered before an area may become a designated area are:

- The availability, cost and condition of business facilities.
- The number and age of abandoned structures.
- The number and age of substandard structures.
- The income of residents relative to State or regional median incomes, including the number of persons who are welfare recipients or unemployed.
- The extent of unemployment and the ability to upgrade the social and economic conditions of the designated neighborhood.
- The need for financing for small businesses to upgrade the social and economic conditions of the designated neighborhood
- The neighborhood development or redevelopment strategy of the local jurisdiction for the designated neighborhood.
- Any plans and financial commitments of local jurisdictions to undertake improvements in the designated neighborhood.
- Standards established for other relevant State or Federal programs.
- Local government participation in revitalization activities including whether the area has been designated an enterprise zone.

- The presence of a special taxing, national register, or local historic district.
 - Support from community or business organizations.
 - Other revitalization projects undertaken in the designated neighborhood.
2. Community Legacy Areas assist urban neighborhoods, suburban communities and small towns that are experiencing decline and disinvestment, but have the potential, with modest public and private investment, to again be vibrant places to live and work. Community Legacy provides flexible financing to meet the unique needs of each community it serves. Funds will be used to both complement and supplement existing State resources. Reduced property taxes and tax increment financing are two methods used in many revitalization efforts.

Community Legacy helps stabilize existing communities, which have significant public and private investment in education and other cultural institutions, parks, water and sewer, streets and sidewalks. By attracting residential and business growth, towns and cities can once again be vibrant centers of community, preventing development in the “cornfields”.

C. Stabilization Areas

Stabilization Areas are areas which do not meet fit in to the profile of PGAs and PRAs. These areas are focused on maintaining infrastructure (water, sewer, road facilities) while promoting and preserving a solid quality of life.

III. Conservation

The categories of conservation areas appear below. It is envisioned that the designation of conservation areas is based on analysis of resource land status (amount of existing residential subdivision and development), vulnerability (how much more development can occur under current zoning), and threat (how much market demand is present). Considered together, these measures estimate the degree to which land use is stabilized by zoning, preservation and land use tools commensurate with market demand. They can be used to assess the likelihood that State goals for conservation of large contiguous areas of resource land, relatively free from the compromising impacts of development, can be achieved. Maryland’s various land preservation programs would consider which conservation PFA category it would fall into when it comes to prioritizing their program expenditures.

A. Rural Resource Lands- Level 1

These would be areas where successful conservation of relatively large geographic extents of resource lands is feasible, because the compromising effects of development have been and are likely to continue to be limited. Resource lands are fairly intact and the vulnerability and threat to the land from development is limited by strong local zoning and related subdivision and development tools, or the absence of a large development market for residential lots. These areas would be a focus for major State investment.

B. Rural Resource Lands- Level 2

These would be areas with low to moderate levels of fragmentation by development. However, zoning, and related subdivision and development tools are not stabilizing land use commensurate with development pressure. Conservation investment is not protected, because the areas are so vulnerable to subdivision and development. In Level 2 areas, the State would seek collaborations with the local

government to see if they might wish to embrace conservation objectives and use local land use tools to protect the State's conservation investment, thereby meriting conservation investment similar to Rural Resource Lands-Level 1.

C. Small Scale Conservation Areas

The resource value of lands in the Small Scale Conservation Areas has been badly compromised by development. Further, the land use tools in place are unprotective and have permitted excessive development, before easement programs could achieve their goals. State conservation goals are highly unlikely to be achieved.

However, these are areas where isolated conservation efforts can be implemented. Particular resources can be completely protected through preservation of relatively few parcels. Typically these lands have a unique attribute that is extremely important to conserve. These areas comprise two types: places like old rural hamlets that were developed long ago and are not expecting much growth; and areas that are undeveloped now and are vulnerable to development that they may not get. In both cases, investment in land preservation is justified.

Adequate Public Facilities Ordinances (APFOs)

The Task Force on the Future of Growth and Development, in compiling its recommendations included the examination of Adequate Public Facilities Ordinances (APFOs) and their strengths, weaknesses and to explore how to make them a stronger tool for facilitating growth and development. The Task Force Chairman, Mr. Jon Laria has requested that the Maryland Department of Planning examine APFOs critically and propose some suggestions for the Task Force's recommendation about APFOs.

Introduction

Adequate public facilities are necessary to ensure sustainable, efficient communities where services such as roads, water, sewerage facilities and schools can meet the demands of the population. In Maryland, the planning for development is present but does not always align with the fiscal investments necessary to meet the demands of growth and development. Often, paying for public facilities is not a priority until there is a problem meeting population demands.

The Maryland Department of Planning does not have empirical data available related to APFOs. However, there is anecdotal information that the Maryland Department of Planning can utilize and to give a professional analysis of APFOs. The Task Force has discussed APFOs based on some members real-life experiences with development and how APFOs have affected development patterns.

What is an APFO?

Attached please find an example of an APFO from Carroll County. Carroll County was not chosen for any particular reason other than to provide the Task Force an example of what such an ordinance encompasses. For the purposes of this document, transportation; schools; water and sewer will be examined for their individual merit and how they fit into an APFO. Available capacity for water and sewer systems is regulated by the State. Standards for schools, roads, and other services and facilities, however, can vary by County based on the expectations of residents. Below is a brief explanation of how transportation, schools, and water and sewer work generally in the context of an APFO.

A. Transportation

Transportation, as part of an APFO, often does not get the necessary attention in plans and building permit approvals. It is common that traffic impact studies are conducted and traffic calming measures are implemented but there is not a real halt to building due to road conditions and failing Levels of Service unlike schools. Road capacity is usually measured as Level of Service (LOS): A through F (A = free flowing and easy to maneuver; F = a breakdown in traffic flow, with potential for congestion to extend far "upstream"). These standards were established by the Transportation Research Board of the National Academies in Washington, DC.

B. Schools

Schools on the other hand, more often than any other APFO consideration, have the power to halt plans and building permit approvals. The halt to plan and building permit approvals will remain in place until

the enrollments are satisfactory and will not result in overcrowding. Typically, an APFO employs a percentage threshold to determine if a school is over-capacity. This percentage varies from county to county, but is usually in the range of 105% to 115% over school capacity.

The most common standard for school capacity is State Rated Capacity (SRC). The Administrative Procedures Guide for Maryland's Public School Construction Program defines SRC as "the maximum number of students that reasonably can be accommodated in a facility without significantly hampering delivery of the education program." To calculate the SRC standard, take the number of classrooms per grade and multiply them by a State-approved capacity for each classroom. (Keep in mind that the SRC is a standard for school overcrowding, NOT classroom size.) The school's actual enrollment is divided by the SRC to get a percentage of the SRC known as a utilization rate—say 85% of SRC, or 100%, or 110%. The County APFO would state a maximum utilization rate—110% of SRC, for example—for school capacity, at which point the APFO would delay further development in the school district until school capacity was increased (or until redistricting lowered the utilization rate of the school).

Past enrollment history is usually used to determine how many new students would be generated by new housing of a particular type.

Another stumbling block in assessing future enrollment is the inability to capture pipeline development. The current IAC regulations cannot take into consideration pipeline development and that pipeline development would support a new school. Thus, if an area is subject to the APFO it cannot, at the same time, justify the school enrollment projections associated with pipeline development. If the pipeline development could be considered then that would possibly precipitate the necessity for a new school and lift the APFO. Solid, reliable pipeline data coupled with changing the School Inter-agency Committee (IAC) regulations could potentially be used as a way to lift an APFO, address future growth that has already been approved and appropriately address the development that is on the horizon.

Consideration should also be given to grandfathering existing APFOs and giving priority to those jurisdictions that use the State Rated Capacity (SRC) of 115%. Anything less than the 115% could precipitate unnecessary and tighter restrictions that affect the proper functioning of a school district.

C. Water and Sewer

Water and sewer constraints, like transportation, are often part of an APFO. It is understood that building permits are only released if the allocation is available but this is very different than APFO. APFOs are not typically used for water and sewer since the current allocation availability take precedence and dictate the number of permits that may be released. Properly designed APFOs will consider public facilities and their availability before a crisis occurs and plan for those future needs.

Water supply is measured by millions of gallons per day available for use. Adequacy of water supply depends on three things: a sufficient supply of water, a sufficient water treatment capacity to make the water potable, and a distribution system that can maintain necessary water pressure for all users. Estimates of household consumption for new development depend on the type and size of the houses and the size of the lots.

The State sets requirements for insuring the adequacy of water supply. A shortage in supply, including the ability to store and pump the water, can bring a sudden halt to planned growth in growth areas: According to the Environment Article of the Annotated Code of Maryland, § 9-512(b)(1) and (d)(1), the “local authority may not issue a building permit” unless the “water supply system...is adequate to serve the proposed construction” or “record or approve a subdivision plat” unless water supply is adequate or will be “in time to serve the proposed development.”

Sewer capacity is usually expressed as millions of gallons per day that can be treated at wastewater treatment plants. Current Maryland law requires that each County have a master plan for water and sewer service, which delineates where service exists or is planned within 10 years. (County sewer and water plans include the towns.) If an area is not in a planned service area, densities consistent with Smart Growth cannot be achieved.

The same legal provisions that can halt the issuance of building permits and subdivision approval due to lack of water capacity also apply to sewage treatment capacity (and solid waste as well). (Environment Article of the Annotated Code of Maryland, § 9-512(b)(1) and (d)(1).)

Benefits of an APFO

- It helps direct growth to designated growth areas, but only if used correctly.
- By supporting growth where the County wants it, the APFO, if used correctly, can remove some of the development pressure in rural preservation areas.
- It directs resources to communities in need of expanded services and facilities, and helps revitalize them.
- It can streamline the regulatory process and facilitate economic development by providing clear guidance to developers on where and when development will be allowed.
- An APFO can help prevent a number of undesirable growth scenarios:
 - * Development that cannot be supported and leaves the County playing catch-up.
 - * Public resistance to further development in growth areas—due to overburdening of services and facilities—which pushes development into areas designated for preservation.

Problems with APFOs

APFOs have the ability to be a strong tool to influence and guide growth. However, APFOs are more frequently used as a reactionary tool when certain public facilities are at a critical state. For example one of the most influential factors is schools. Counties will dictate through its APFO a certain breakpoint in the form of a percentage to determine whether or not a particular school is at or over capacity. If the school is over the prescribed percentage, building permits for that school attendance area is suspended until the enrollment projections are under the threshold percentage. Unfortunately, once a school attendance area is closed to development the area can be so incredibly overburdened that recovery is

almost impossible to achieve unless drastic measures are made. Coordination is needed between the planning department and the board of education, so that school-related decisions are consistent with the APFO and the comprehensive plan.

The answer to fixing this dichotomy is to consider impacts of growth and set a fiscal strategy that meets those impacts *before* a crisis occurs. The best way to do this is to have a strong comprehensive plan which preempts all planning related to growth. This plan should state the goals of controlled growth with action items that would require the zoning ordinance, plan approval process, school board planning, water and sewer planning and transportation planning to all work in concert with these goals through responsible spending to provide adequate public facilities.

One way to carrying out the goal of sustainable, smart growth is a strong Capital Improvement Program (CIP) that allocates funds to maintain and improve public facilities in a controlled manner. CIPs should take into consideration all necessary needs and logically handle all system issues, not just schools, before a crisis arises. If this means that a building moratorium is necessary then that should be done to allow the funding authorities to “catch up” and be able to get a public facility on its feet and running in an efficient manner.

- An APFO must be associated with a funding source and mechanism to bring facilities and infrastructure up to an adequate level inside designated growth areas. If it isn't, development may result in rural areas.
- The financial commitment to bring facilities and infrastructure up to an adequate level may seem overwhelming. However, the County will ultimately bear the cost sooner or later, and the expense of supporting unplanned growth will ultimately be higher than supporting planned growth with the APFO.
- Residents in designated growth areas may resist an APFO if the APFO closes another area of the county because they think it will bring an extra amount of development that they do not like. However, the solution is not to saturate development in these designated growth areas with insensitive design but rather to employ other planning tools, such as form- based codes.
- An APFO strengthens the link between land use planning and facilities planning. For an APFO to work, it should be used to inform decisions about which projects should receive priority funding in the capital improvement programs. Surprisingly, this is often not done in counties that have an APFO.

The Proper Role of APFOs

- An APFO ties development approvals under zoning and subdivision ordinances to standards for public facilities such as roads, schools, water supply, sewage treatment, emergency services, libraries, ball fields and parks, etc.
- An APFO can slow the pace of development or in extreme cases delay development approvals in growth areas until adequate service levels are in place or reasonably assured.

- An APFO *cannot* be used to for extended time periods to halt development that is otherwise consistent with zoning and subdivision statutes; that would be unconstitutional.
- An APFO is directly tied to a CIP and gives priority to those areas closed by the APFO.

What an APFO Is Not

- An APFO is not a substitute for a coherent growth management policy based on an adopted comprehensive plan. It is one of many planning tools, not a substitute for other tools.
- An APFO is not a means for stopping growth but is sometimes used that way. It is a tool for timing growth in growth areas.
- An APFO is not a surrogate for protective zoning in rural areas. An APFO may delay development, but development that is allowed by zoning and subdivision ordinances has a right to proceed eventually, either with the needed infrastructure or without it.
- An APFO is not intended to facilitate growth in rural areas designated for preservation.
- An APFO is not an impact fee. An impact fee is levied on the developer of a project as compensation for otherwise-unmitigated impacts the project will produce. Impact fees raise funds for capital projects but have no effect on the pace of development. However, impact fees can be part of the financing strategy for an APFO.

Administering the APFO

Vigilance is required to ensure that the APFO functions as required. The ongoing monitoring and evaluating is time-consuming. The following must occur to ensure that an APFO functions properly:

- The County needs to establish a process for monitoring the utilization rates of the facilities and services that are subject to the APFO.
- The capacity of various facilities to be used up by any proposed development needs to be calculated.
- The County needs to decide at which stage in the development process to apply the APFO test:
 - * At the concept plan stage (perhaps most desirable).
 - * At the plat approval stage (most common).
 - * At the building permit stage (risky for the developer to proceed this far without assurance that the development can move ahead).
- Exemptions to the APFO may be allowed to encourage certain types of development, such as transit oriented development, new town centers, or workforce housing. The County might not want to delay a new factory because a nearby road may not be upgraded in time for the plant's

opening. However, such flexibility should be saved for unusual circumstances and not applied so liberally that it undermines the intent of the APFO.

Paying for Adequate Public Facilities

The arrangements between the State and County for financing roads, schools, water and sewerage facilities, etc., are complicated. However, there are ways that the County can avoid a moratorium on building in growth areas when the normal financing mechanisms cannot keep up with growth there.

- The capital budget should be analyzed to ensure that spending is targeted to APFO non-attainment areas.
- Developers should have the option of paying for facilities that will be delayed if financed through the County's CIP.
- Impact fees are charges levied by the County on new development as a way to recoup some of the cost of providing that new development with public facilities.
- Impact taxes (or excise taxes) are more flexible than impact fees because the level of the tax is not directly tied to the cost of providing a particular service to a particular type of development.
- Long-term borrowing for capital facilities is appropriate for financing large facilities that benefit more than one generation of users.
- Where possible, special limited-assessment, revenue, and other self-supporting bonds shall be used instead of tax-supported general obligation bonds.

What are some recommendations that Task Force on the Future for Growth and Development can make about APFOs?

1. Require, through legislation, that if a jurisdiction is going to adopt an APFO, the jurisdiction must also adopt a Capital Improvement Program (CIP) which coordinates with the local APFO and prioritizes money for areas closed by an APFO. Also, for jurisdictions that already have APFOs and no CIP, require those jurisdictions to adopt a CIP.
2. APFOs should have a sunset period attached for any moratorium that it may impose. This would greatly stem the exodus of development out of designated growth areas to more rural areas. The intention would be to force jurisdictions to make the necessary choices to fix any inadequacies permanently instead of applying a temporary fix.
3. Require that the State implement a proper study to get the empirical data necessary and make informed decisions about APFOs. As a part of this study explore ways to capture the development pipeline, consider updating IAC regulations as a part of addressing pipeline

development where schools are concerned, and determine whether local jurisdictions are applying a consistent method for determining school capacity.



Carroll County Maryland

Code of Public Local Laws and Ordinances

Chapter 71, ADEQUATE PUBLIC FACILITIES AND CONCURRENCY MANAGEMENT

[HISTORY: Chapter 167 was adopted 03/05/98 by Ord No. 161 and amended 08/13/02 by Ord. No. 02-12. Comprehensive revisions and recodification adopted 04/20/04 by Ord. No. 04-13.]

§ 71-1. Purpose.

§ 71-2. Definitions.

§ 71-3. Applicability.

§ 71-4. Building permits.

§ 71-5. Adequacy approval.

§ 71-6. Approval process.

§ 71-7. Residential development database and annual report.

§ 71-1. Purpose.

- A. The purpose of this chapter is to ensure that proposed or planned residential growth proceeds at a rate that will not unduly strain public facilities, including schools, roads, water and sewer facilities, and police, fire, and emergency medical services.
- B. This chapter establishes minimum adequacy standards or thresholds for these facilities and services and mandates that the cumulative impacts of proposed or planned residential growth, within the incorporated municipalities and the County, be considered in testing for adequacy under these standards.
- C. This chapter does not abrogate or supersede any other applicable statutes, ordinances, regulations, or policies.

§ 71-2. Definitions.

[Amended 02/14/08 by Ord. No. 08-01]

In this chapter the following terms have the meanings indicated. Any term not defined in this chapter shall have the meaning as defined in any chapter of the Code. Any term not defined in the Code in any chapter shall have its generally accepted meaning.

ADEQUACY APPROVAL -- The process by which the adequacy of public facilities and services is determined.

AVAILABLE THRESHOLD CAPACITY or ATC -- The amount of capacity available for future development under this chapter determined by balancing the County's ability to pay for infrastructure, schools, and police, fire, and emergency medical services with building permit reservations and phasing of projects. Capacity of a facility is determined by the County or the incorporated municipality, if applicable.

BUILDING PERMIT -- As used in this chapter, the term "building permit" includes only projects that create one or more new residential dwelling units or equivalent dwelling units.

BUILDING PERMIT CAP -- The number of residential building permits to be issued during a fiscal year in a specific area of the county or county-wide, as authorized by this chapter.

BUILDING PERMIT RESERVATION -- The ability to apply for a building permit, as authorized by this chapter.

COMMISSION -- The Carroll County Planning and Zoning Commission.

COMMUNITY INVESTMENT PLAN or CIP -- The 6-year plan adopted annually by the Board of County Commissioners to provide, expand, and renovate public facilities.

COUNTY -- The Board of County Commissioners or its designee.

DEPARTMENT -- The Department of Planning or any successor agency designated by the Board of County Commissioners.

DEVELOPER -- An individual, partnership, firm, corporation, or unincorporated association that undertakes or participates in the activities covered by this chapter.

DEVELOPMENT PIPELINE -- Unrecorded residential development projects for which the County has accepted a concept plan or an incorporated municipality has accepted a plan.

DWELLING UNIT -- A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

EQUIVALENT DWELLING UNIT -- For multi-unit residential development which does not contain complete dwelling units, the number of dwelling units shall be calculated as follows:

- A. For the first 8 occupants, one dwelling unit; and
- B. For every 3 occupants after the first 8 occupants, one additional dwelling unit. [Amended 02/14/08 by Ord. No. 08-01]

LATE RESPONSE -- An incident when the primary unit from the first-due fire department responds after the allotted time has elapsed as determined by the Carroll County Volunteer Emergency Services Association or its successor.

LEVEL OF SERVICE -- A qualitative measure describing operational conditions on road segments and intersections. Designations of A (free flow) through F (heavily congested) are determined based on criteria established by the Department of Public Works or State Highway Administration, as applicable.

MAXIMUM DAY DEMAND -- The annual average day demand for water multiplied by 1.75.

NO RESPONSE-- An incident when the primary unit from the first-due fire department fails to respond.

PHASING -- The scheduled stages by which a project or sections of lots subject to this chapter may proceed which regulate the progress of the project concurrent with available or adequate public facilities or services, or future availability of a relief facility.

PROJECTED ANNUAL AVERAGE DAILY FLOW -- The annual average daily flow for sewerage plus the projected flow for the proposed use.

RESIDENTIAL DEVELOPMENT -- All proposed buildings or structures which will contain one or more dwelling units or equivalent dwelling units. This term includes an accessory dwelling, nursing home, continuing care retirement community, and assisted living facility. This term does not include a hospital, hotel, motel, or similar building used for transient overnight stays.

RETIREMENT HOME -- A development consisting of one or more buildings designed to meet the needs of, and exclusively for, the residences of persons at least 55 years of age. *[Added 02/14/08 by Ord. No. 08-01]*

ROADS -- Applies to public roads that the County or other governmental entity owns or has primary maintenance responsibility.

SCHEDULED COMPLETION YEAR -- The year established by the Planning and Zoning Commission for recordation of each section of a project.

SCHOOLS -- Applies only to public schools kindergarten through grade 12.

§ 71-3. Applicability.

[Amended 02/14/08 by Ord. No. 08-01]

A. This chapter applies to:

- (1) Major residential subdivisions.
- (2) Minor residential subdivisions not in the Agricultural District.
- (3) Site plans for residential development.
- (4) Mobile home parks. *[Amended 02/14/08 by Ord. No. 08-01]*

B. This chapter does not apply to:

- (1) Off-conveyances, including off-conveyed lots and remainders.
- (2) Commercial and industrial projects.
- (3) Minor residential subdivisions in the Agricultural District.
- (4) Government uses of property and improvements.
- (5) Amendments to plats and site plans that do not increase residential density over that already approved.
- (6) Residential subdivisions on property subject to an agricultural land preservation easement. *[Added 05/17/07 by Ord. No. 07-07; amended 02/14/08 by Ord. No. 08-01]*

C. Modified adequacy testing for certain projects.

- (1) Provided retirement homes are located within a public water and a public sewer service area, retirement homes do not require adequacy approval as to schools but shall meet all other requirements of this chapter. *[Amended 02/14/08 by Ord. No. 08-01]*
- (2) Final plats and site plans for which the Commission or Department of Planning issued final approval but were not recorded on or before March 5, 1998, shall meet the building permit requirements of this chapter but are not required to obtain adequacy approval in order to be eligible for building permits.

§ 71-4. Building permits.

[Amended 02/14/08 by Ord. No. 08-01]

- A. In areas of Carroll County where thresholds are not met, are approaching inadequacy, or a need to finance facilities exists, the County may establish a building permit cap prescribing the number of residential building allocations to be issued in that area. In those areas, the County shall determine the total number of building permit reservations per year and the number of building permit reservations to be allocated per subdivision. Building permit reservations are nontransferable from one lot to another. The County may reserve a certain number of the building permits for projects not subject to this chapter.
- B. The County intends that the number of residential development building permit approvals issued in the county shall not exceed an average of 6,000 during any 6-year period. For purposes of counting the 6,000 permits, all building permits issued county-wide, including those issued in municipalities and those issued for projects that are not subject to this chapter, shall be included. In order to achieve this goal, the County may establish a building permit cap prescribing the number of residential building permits to be issued in Carroll County for

projects listed in § 71-3A.

- C. The Department, in making recommendations to the Commission regarding the adequacy of public facilities and services for projects subject to this chapter, shall consider the cumulative impacts of the development pipeline in both the County and in the incorporated municipalities. In determining the adequacy of facilities and services, the Commission shall consider the impact of the project and the cumulative impact of the development pipeline in both the County and in the incorporated municipalities.
- D. Except as otherwise provided in subsections A or B above, building permits that are subject to this chapter shall be issued on a first-come-first-served basis.
- E. **Building permit limit.** *[Amended 02/14/08 by Ord. No. 08-01]*
 - (1) Except as provided in paragraph (2), the County shall not issue more than 25 building permits per subdivision or 25 residential dwelling units or equivalent dwelling units, as applicable for the project, per fiscal year. The building permits are nontransferable from one lot to another and shall not exceed 25 per subdivision regardless of multiple or successive ownership.
 - (2) For multi-unit residential site plans, the County shall not issue a building permit or permits for more than 50 residential dwelling units or equivalent dwelling units, as applicable for the project, per fiscal year.
 - (3) A developer may not circumvent the provisions of this chapter by submitting piecemeal applications for approvals for any parcel of land subdivided after March 5, 1998.
 - (4) This subsection is in addition to and not in lieu of any other limit imposed by law, regulation, or public works agreement.
- F. Nothing in this chapter shall be construed to limit the number of building permits the County will issue for projects within the boundaries of incorporated municipalities.

§ 71-5. Adequacy approval.

[Amended 02/14/08 by Ord. No. 08-01]

- A. ATC is required for all years in the current 6-year CIP.
- B. No project may be approved by the Commission if a public facility or service is inadequate or projected to be inadequate during the current CIP, unless a relief facility is planned to address the inadequacy or the developer provides mitigation acceptable to the County. No residential plat may be recorded or final residential site plan approved until a relief facility planned to address the inadequacy in the current CIP has construction underway and completion is anticipated within 6 months or the developer provides mitigation acceptable to the County.
[Amended 02/14/08 by Ord. No. 08-01]
- C. For projects that received preliminary approval by the Commission after March 5, 1998, and prior to April 22, 2004, the developer shall submit the project to the Commission for issuance of a recordation schedule and building permit reservations. For projects that received preliminary approval by the Commission prior to March 5, 1998, the project shall be tested for adequacy when final plan approval is sought pursuant to § 71-6E.
- D. **Threshold requirements.**
 - (1) **Adequacy.** *[Amended 02/14/08 by Ord. No. 08-01]*
 - (a) **Schools.** An elementary or high school serving a proposed project is adequate, for the purposes of this chapter, when projected enrollment equals or is less than 109% of the state-rated capacity. A middle school serving a proposed project is adequate, for the purposes of this chapter, when projected enrollment equals or is less than 109% of the functional capacity.
 - (b) **Roads.** Projected level of service for road segments and intersections within the traffic impact study area for the proposed project is adequate if rated Level of Service C or better, according to the Department of Public Works or by the State of Maryland, as applicable.
 - (c) **Fire and emergency medical services.** Services are adequate if:
 - [1] Projected total number of late and no responses is less than 15%, and the total number of no responses is less than 4% measured on a quarterly basis;
 - [2] *[Amended 02/14/08 by Ord. No. 08-01]* Using an average over the previous 24 months, response time is 8 minutes or less from time of dispatch to on-scene arrival with adequate apparatus and personnel; and
 - [3] All bridges and roads for the most direct route or acceptable secondary route to the project site are adequate to support fire and emergency response apparatus.
 - (d) **Police services.** Services are adequate if the projected ratio of sworn law enforcement officers to population is 1.3:1,000. The ratio shall be calculated by counting all sworn officers with law

enforcement responsibility in an incorporated municipality or within the county and by counting the total population within the incorporated municipalities and within the unincorporated county.

- (e) Water and sewer services. For water services, the facility is adequate if the maximum day demand is less than 85% of the total system production capacity. For sewer services, the facility is adequate if the projected annual average daily flow is less than 85% of the wastewater treatment facility permitted capacity. *[Amended 02/14/08 by Ord. No. 08-01]*

(2) Approaching inadequacy. *[Amended 02/14/08 by Ord. No. 08-01]*

- (a) Schools. An elementary school serving a proposed project is approaching inadequate, for the purposes of this chapter, when projected enrollment is 110% to 119% of the state-rated capacity. A middle school serving a proposed project is approaching inadequate, for the purposes of this chapter, when projected enrollment is 110% to 119% of the functional capacity. A high school serving a proposed project is approaching inadequate, for the purposes of this chapter, when projected enrollment is 110% to 119% of the state-rated capacity.
- (b) Roads. Projected level of service for road segments and intersections within the traffic impact study area for the proposed project is approaching inadequate if rated Level of Service D, according to the Department of Public Works or by the State of Maryland, as applicable.
- (c) Fire and emergency medical services. Services are approaching inadequate if:
 - [1] either the projected total number of late and no responses exceeds 15%, or the total number of no responses exceeds 4% measured on a quarterly basis, but not both; or *[Added 02/14/08 by Ord. No. 08-01]*
 - [2] using an average over the previous 24 months, response time is between 8 and 10 minutes from time of dispatch to on-scene arrival with adequate apparatus and personnel. *[Amended 02/14/08 by Ord. No. 08-01]*
- (d) Police services. Services are approaching inadequate if the projected ratio of sworn law enforcement officers to population is between 1.2-1.3:1,000. The ratio shall be calculated in accordance with § 71-5D(1)(d).
- (e) Water and sewer services. For water services, the facility is approaching inadequate if the projected maximum day demand is equal to or greater than 85% but less than 95% of the total system production capacity. For sewer services, the facility is approaching inadequate if the projected annual average daily flow is greater than or equal to 85% but less than 95% of the wastewater treatment facility permitted capacity. *[Amended 02/14/08 by Ord. No. 08-01]*

(3) Inadequacy. *[Amended 02/14/08 by Ord. No. 08-01]*

- (a) Schools. An elementary school serving a proposed project is inadequate, for the purposes of this chapter, when projected enrollment is equal to or greater than 120% of the state-rated capacity. A middle school serving a proposed project is inadequate, for the purposes of this chapter, when projected enrollment is equal to or greater than 120% of the functional capacity. A high school serving a proposed project is inadequate, for the purposes of this chapter, when projected enrollment is equal to or greater than 20% of the state-rated capacity. *[Amended 02/14/08 by Ord. No. 08-01]*
- (b) Roads. Projected level of service for road segments and intersections within the traffic impact study area for the proposed project is E or F, according to the Department of Public Works or by the State of Maryland, as applicable.
- (c) Fire and emergency medical services. Services are inadequate if:
 - [1] Projected total number of late and no responses exceeds 15%, and the total number of no responses exceeds 4% measured on a quarterly basis;
 - [2] *[Amended 02/14/08 by Ord. No. 08-01]* Using an average over the previous 24 months, response time exceeds 10 minutes from time of dispatch to on-scene arrival with adequate apparatus and personnel or
 - [3] A bridge or road is inadequate to support fire and emergency response apparatus for the most direct route and a bridge or road is inadequate to support fire and emergency response apparatus for the acceptable secondary route to the project site.
- (d) Police services. Services are inadequate if the projected ratio of sworn law enforcement officers to population is anything less than 1.2:1,000. The ratio shall be calculated in accordance with § 71-5D(1)(d).
- (e) Water and sewer services. For water services, the facility is inadequate if the projected maximum day demand is equal to or greater than 95% of the total system production capacity. For sewer

services, the facility is inadequate if the projected annual average daily flow is greater than or equal to 95% of the wastewater treatment facility permitted capacity. *[Amended 02/14/08 by Ord. No. 08-01]*

- (4) **Building permit requirements.** The availability of building permit reservations as limited by a building permit cap as adopted pursuant to § 71-4 of this chapter.

§ 71-6. Approval process.

[Amended 02/14/08 by Ord. No. 08-01]

- A. No development project subject to this chapter may be approved by the Commission until the project has satisfied the requirements of this chapter.
- B. Any permit or approval obtained in violation of this chapter is void.
- C. **Concept process.**
- (1) A concept concurrency application for a residential subdivision or other project subject to this chapter shall be submitted when a concept plan, pursuant to Chapter 103, is submitted to the Department. The application shall contain:
 - (a) The number of units, type of units, and gross density of the proposed project;
 - (b) The location of the proposed project;
 - (c) Identification of the public facilities impacted by the proposed project;
 - (d) The tax account identification number; and
 - (e) Any other relevant information required by the County.
 - (2) Upon acceptance by the County of a completed concept concurrency application, the Department shall review the proposed project for ATC and compliance with this chapter. The Department, as staff to the Commission, shall issue a tentative determination as to the adequacy of public facilities. The tentative determination does not constitute any guarantee of adequacy of public facilities and is not binding upon the Commission. *[Amended 02/14/08 by Ord. No. 08-01]*
 - (3) The tentative determination shall expire 6 months after issuance unless a preliminary plan is submitted and accepted for review in accordance with Chapter 103.
- D. **Preliminary process.**
- (1) A preliminary concurrency application for a residential subdivision or other project subject to this chapter shall be submitted when a preliminary plan, pursuant to Chapter 103, is submitted to the Department. The application shall contain:
 - (a) The number of units, type of units, and gross density of the proposed project;
 - (b) The location of the proposed project;
 - (c) Identification of the public facilities impacted by the proposed project;
 - (d) A traffic impact study for roads and intersections completed in accordance with the traffic impact study guidelines contained in the Department of Public Works Design Manual, Volume I, Roads and Storm Drains, as revised or amended;
 - (e) The tax account identification number; and
 - (f) Any other relevant information required by the County.
 - (2) **Distribution and review.**
 - (a) After all review agency comments have been addressed and the Department has determined that the preliminary plan may be presented to the Commission, the Department shall distribute the ATC form and preliminary plan to the appropriate agencies for review and comment.
 - (b) Upon receipt of all applicable agency comments and ATC forms, the Department shall review the proposed project for ATC and compliance with this chapter.
 - (c) If no response is received from any applicable agency within 30 days of the date the Department distributes the ATC form, the ATC shall be presumed adequate for the particular facility or service for which no response was received.
 - (d) No preliminary plan may be presented to the Commission until the written report is prepared pursuant to paragraph (3).
 - (e) The preliminary plan may not be withdrawn from the Commission agenda by the developer after the distribution of the ATC form. The preliminary plan shall be presented to the Commission for adequacy approval.

- (3) The Department shall forward a written report to the Commission including a recommendation as to whether adequacy approval should be granted and the following information:
- (a) The number and type of units the proposed project would generate;
 - (b) The specific public facilities impacted by the proposed project;
 - (c) The extent of impact of the proposed project;
 - (d) The availability of ATC to serve the proposed project during the scheduled completion year and all remaining years in the existing CIP;
 - (e) The demand on existing and planned public facilities and services from all existing and approved development in the proposed project's applicable service area or district, including lots or projects not subject to this chapter, as follows:
 - [1] Existing lots and subdivisions, including residential units which have been approved by the Commission, in the impact area; and
 - [2] All residential building permits proposed or projected in the impact area for the 6-year CIP period including units which are not subject to this chapter, such as off-conveyances, minor subdivisions in the Agricultural District, and residential projects located in incorporated municipalities.
 - (f) If any existing facilities or services are inadequate, whether any facilities or services are planned in the CIP or budget that would alleviate the inadequacy, including the year in which the facilities or services are projected to be completed and operational and the extent to which they would alleviate the inadequacy.
- (4) Planning and Zoning Commission adequacy determination.
- (a) Denial. If a public facility or service is inadequate or projected to be inadequate during the current CIP at the preliminary plan stage and no relief facility is planned in the 6-year CIP to address the inadequacy or no mitigation is accepted by the County pursuant to § 71-5B, the plan shall be denied by the Commission. At the request of the developer, the plan may be placed in a queue and re-tested on an annual basis.
 - (b) Conditional approval. If a public facility or service is inadequate and a relief facility is planned in the 6-year CIP to address the inadequacy or mitigation is accepted by the County pursuant to § 71-5B, or a public facility or service is approaching inadequate during the current CIP, the Commission may conditionally approve the plan to proceed to the final plan stage and issue a tentative recordation schedule and tentative building permit reservations, subject to modification at the final plan stage.
 - (c) Approval. If all public facilities and services are adequate during the current CIP, the Commission may approve the plan to proceed to the final plan stage and issue a recordation schedule and building permit reservations, subject to a building permit cap adopted by the Board of County Commissioners in effect at the time of application for building permits.
- (5) For projects released from a queue, the project will be re-tested as to the facility or service which was inadequate or projected to be inadequate, in accordance with this subsection D.

E. Final process.

- (1) A final concurrency application for a residential subdivision or other project subject to this chapter shall be submitted when a final plat or site plan, pursuant to Chapter 103, is submitted to the Department. The application shall contain:
- (a) The number of units, type of units, and gross density of the proposed project;
 - (b) The location of the proposed project;
 - (c) Identification of the public facilities impacted by the proposed project;
 - (d) The tax account identification number;
 - (e) For a site plan, a traffic impact study for roads and intersections completed in accordance with the traffic impact study guidelines contained in the Department of Public Works Design Manual, Volume I, Roads and Storm Drains, as revised or amended; and
 - (f) Any other relevant information required by the County.
- (2) Distribution and review.
- (a) After all review agency comments have been addressed and the Department has determined that the final plan may be presented to the Commission, the Department shall distribute the ATC form and final plan to the appropriate agencies for review and comment.

- (b) Upon receipt of all applicable agency comments and ATC forms, the Department shall review the proposed project for ATC and compliance with this chapter.
 - (c) If no response is received from any applicable agency within 30 days of the date the Department distributes the ATC form, the ATC shall be presumed adequate for the particular facility or service for which no response was received.
 - (d) No final plan may be presented to the Commission until the written report is prepared pursuant to paragraph (3).
 - (e) The final plan may not be withdrawn from the Commission agenda by the developer after the distribution of the ATC form. The final plan shall be presented to the Commission for adequacy approval.
- (3) The Department shall forward a written report to the Commission including a recommendation as to whether adequacy approval should be granted and the following information:
- (a) The number and type of units the proposed project would generate;
 - (b) The specific public facilities impacted by the proposed project;
 - (c) The extent of impact of the proposed project;
 - (d) The availability of ATC to serve the proposed project during the scheduled completion year and all remaining years in the existing CIP;
 - (e) The demand on existing and planned public facilities and services from all existing and approved development in the proposed project's applicable service area or district, including lots or projects not subject to this chapter, as follows:
 - [1] Existing lots and subdivisions, including residential units which have been approved by the Commission, in the impact area;
 - [2] All residential building permits proposed or projected in the impact area for the 6-year CIP period including units which are not subject to this chapter, such as off-conveyances, minor subdivisions in the Agricultural District, and residential projects in incorporated municipalities; and
 - (f) If any existing facilities or services are inadequate, whether any facilities or services are planned in the CIP or budget that would alleviate the inadequacy, including the year in which the facilities or services are projected to be completed and operational and the extent to which they would alleviate the inadequacy.
- (4) Planning and Zoning Commission adequacy determination. *[Amended 02/14/08 by Ord. No. 08-01]*
- (a) Denial. If a public facility or service is inadequate or projected to be inadequate during the current CIP at the final plan stage and no relief facility is planned in the 6-year CIP to address the inadequacy or no mitigation is accepted by the County pursuant to § 71-5B, the plan shall be denied by the Commission. At the developer's request, the plan may be placed in a queue and re-tested on an annual basis.
 - (b) Conditional approval. If a public facility or service is inadequate and a relief facility is planned in the 6-year CIP to address the inadequacy or mitigation is accepted by the County pursuant to § 71-5B or a public facility or service is approaching inadequate, the Commission may approve the plan subject to a phasing plan for recordation or may defer the project and place the plan in a queue to be re-tested on an annual basis. *[Amended 02/14/08 by Ord. No. 08-01]*
 - (c) Approval. If adequacy was not determined by the Commission at the preliminary plan stage and the Commission determines that all public facilities and services are adequate, the Commission may approve the plan and issue a recordation schedule and building permit reservations.
 - (d) For projects that received a conditional approval and tentative recordation schedule at the preliminary plan stage, the Commission shall review the facility or service which was inadequate or approaching inadequate at the preliminary plan stage and may modify the recordation schedule and building permit reservations or place the project in a queue, at the discretion of the Commission.
 - (e) For projects that received a recordation schedule and building permit reservations at the preliminary plan stage, the Commission shall inform the developer whether any existing or proposed building permit cap would be applicable to the project.
- F. The Department shall maintain an inventory of the disposition and current status of all pending projects,

including those not subject to this chapter, and any queue.

G. The County may assess fees to offset the costs of administering this chapter.

H. In the event a project is placed in a queue, the Director of Planning may extend the sunset provision in accordance with § 103-16G. *[Added 02/14/08 by Ord. No. 08-01]*

§ 71-7. Residential development database and annual report.

[Amended 02/14/08 by Ord. No. 08-01]

- A. The Department shall develop and maintain a complete residential development database for use by the County, incorporated municipalities, and the public. The database shall contain the following information:
- (1) For each school district, fire district, community planning area, incorporated municipality, and other designated geographical boundary, the number of projects, lots, and residential units subject to this chapter and the number of projects, lots, and residential units not subject to this chapter.
 - (2) For each school district, community planning area, and other designated geographical boundary, a calculation of the ATC, for both residential and commercial/industrial land uses, for the facilities and services covered by this chapter, including the additional capacity of future public facilities in the CIP for which funds may be committed within the next 6 years.
 - (3) A list of County and State road segments and intersections with a level of service of D, E, or F.
 - (4) The current population and projected population growth.
- B. The Department shall prepare an annual concurrency management report for use by the Commission and the County in reviewing the CIP and in administering this chapter. In conjunction with its recommendations on the CIP, the Commission shall forward its comments on the report to the Board of County Commissioners with recommendations for building permit caps designated by area or county-wide; capital improvements needed to serve residential development; and amendments to this chapter. The concurrency management report shall contain:
- (1) A summary of all subdivisions and site plans approved by the Commission, approved lots, units, and projects subject to this chapter, building permits issued; *[Amended 02/14/08 by Ord. No. 08-01]*
 - (2) A summary of all units, lots, and projects not subject to this chapter, including an annual average for the last 4 fiscal years of all residential permits not subject to this chapter, including off-conveyances, minor subdivisions in the Agricultural District, pre-existing lots, and residential projects located in incorporated municipalities; *[Amended 02/14/08 by Ord. No. 08-01]*
 - (3) An examination of growth trends and projections in the county, including building permits issued during the preceding 6 fiscal years; *[Amended 02/14/08 by Ord. No. 08-01]*
 - (4) Facility capacity information for each public facility and service listed in this chapter, including projections of capacity for each of the 6 years in the CIP;
 - (5) For each school, functional capacity, state-rated capacity, and any other relevant information; *[Amended 02/14/08 by Ord. No. 08-01]*
 - (6) Student population projections by the Board of Education and by the County;
 - (7) An evaluation of fire and emergency medical services with respect to late and no responses, response time, and adequacy of roads and bridges for each volunteer fire department;
 - (8) For each threshold adopted by the County, a calculation of remaining capacity;
 - (9) An inventory of timing of relief facilities in the CIP to mitigate current and future inadequacies and a staff recommendation for future capital improvements and building permit caps to achieve concurrency;
 - (10) Fiscal information including revenue estimates from new development, impact fee and other fee projections, and operating budget increases related to the facilities and services covered by this chapter;
 - (11) A cumulative total of all approvals and denials under this chapter, including a list of projects placed in a queue for an inadequate or approaching inadequate facility or service; *[Amended 02/14/08 by Ord. No. 08-01]*
 - (12) Proposed changes to the boundaries of impact areas for any public facility;
 - (13) Proposed changes to existing or adopted threshold standards;
 - (14) An evaluation of the feasibility of a plan for increasing the adequacy threshold for police services to a projected ratio of 1.5 sworn law enforcement officers to 1,000 total County population;
 - (15) Proposed changes in concurrency analysis methodologies; and
 - (16) Recommended amendments to this chapter including, but not limited to, changes to the thresholds

imposed by this chapter, and changes to the concurrency management or development review programs.

- C. When a facility or service approaches inadequacy as determined by the Department or government agency responsible for funding the facility or service, the Department shall recommend changes to the ATC and adoption of a building permit cap in accordance with this chapter to the Board of County Commissioners.